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Book Reviews

THE FEDERAL COURTS AND THE FEDERAL SYSTEM, by Henry M. Hart, Jr., and Herbert Wechsler. The Foundation Press, New York, 1953. Pp. lvii, 1445. \$11.00.

This immense book of 1422 pages of substance is chock full of practical and theoretical problems pertaining to courts and their place in the solution of disputes, federal-state conflicts and federal jurisdiction. As such, it covers a different area than the typical course in federal jurisdiction and procedure, or any of the normal procedural courses of a law school curriculum. In fact, the authors are not attempting to provide materials for a procedure course. In their preface they state, "The study of federal jurisdiction has commonly been coupled with that of federal procedure. What has been said will make clear why it is uncoupled here. Procedural problems remain in plenty, to be sure, as they must in any study of law administration, but they are raised and dealt with only as incidents of other problems posited by the main themes. . . . [This book was] designed to lay the foundation for an advanced course in public law. The course that we envisage would be offered to students who are grounded both in constitutional law and in conflicts of laws or, at the least, are studying those subjects simultaneously." (p. xii) Thus, we are discussing materials that were not designed to be the foundation for a basic course of any kind. They were prepared as the basis for an advanced course in "public law." This proposed course is not merely an advanced course in federal jurisdiction. More accurately, it should be referred to as an advanced course in the conflicts between the state and federal governments as indicated by the problems of the judicial system.

Chapter I contains material from which the history and background of the federal judicial system may be traced; pertinent portions of the Constitution itself; articles and papers written at the time of its adoption; and several excellent papers written especially for the book, discussing the constitutional convention and the ratification debates, the organization and growth of the judiciary, the business and the administration of the federal courts (showing the kinds of cases actually handled), and the organization of the Department of Justice. No one reading this

introductory chapter could help but know a little more about the federal judicial system.

The basic purpose of Chapter II is to develop the concept of the "case or controversy." This is done traditionally—first, with historical material, and then, by breaking the problem down into typical definitional problems: adversity of parties, feigned or moot cases, declaratory judgments, political questions, administrative questions, standing to litigate, and the effect of legislative or executive review on judicial decisions. This chapter is not merely descriptive as is the former. The development is made with historical material, cases, special text, questions and problems.

Chapter III takes up the original jurisdiction of the Supreme Court. Seventy pages of cases and text are devoted to theoretical discussion of problems having little practical value.

Chapter IV begins what the editors refer to as "the core of the book," and it is here that the emphasis on the problems of federal-state conflicts begins. This interest in and emphasis on federal-state conflicts makes the book in this area an advanced constitutional law book, and I believe that the editors so intended it. Chapter IV is entitled "Congressional Control of the Distribution of Judicial Power Over Federal and State Courts." The chapter covers the following problems: first, the power of Congress to limit or expand the jurisdiction of federal courts; second, the problem of Congress' authority to exclude state courts from jurisdiction and to provide removal from state to federal courts; third, Congress' authority to create obligations on the part of state courts to hear and determine federal problems. The approach of the whole chapter is to show the development of the problems and the ultimate limitations in the Constitution on the expansion of congressional power in this area. As such it would be of little value as a desk book for the practitioner but would be very valuable as a reference book to the lawyer having problems in this area. An attorney engaged in writing a brief for a client, trial or appellate court involving problems covered by the book would find it invaluable. In the better than one hundred pages devoted to this chapter only seven cases are reported. Text and notes predominate. This is typical of the entire book.

Chapter V shows the power of the Supreme Court to review decisions of the state courts and the means by which the other constitutional rights—for example, "contract clause," "due pro-

cess," and "full faith and credit"—are protected by this review. In this chapter there is some space devoted to the procedure available for such review.

Chapter VI is devoted to a discussion of the law applied in the federal district courts. The development of a country-wide uniform procedural system is shown while at the same time the shift was made from uniform federal substantive law to the doctrine of *Erie R.R. v. Tompkins*.

Chapter VII is a theoretical discussion of the two major areas of federal jurisdiction: federal question and the diversity of citizenship. In this area the authors raise both the constitutional and statutory problems.

Chapter VIII, entitled "General Problems of District Court Jurisdiction," starts with a discussion of process, jurisdiction over persons, and venue. Thereafter the jurisdictional amount problem is treated. Removal jurisdiction and procedure is developed. The problem of conflicts between federal and state court jurisdiction, as exemplified by the case of *Toucey v. New York Life Insurance Co.*, 314 U.S. 118 (1941), is also treated in full.

In the next two chapters, IX and X, two special problems are picked out by the authors as needing development—federal government litigation and federal habeas corpus. Two hundred and fifty pages are devoted to the development of these problems. In not devoting space to the admiralty, bankruptcy, patent, trademark and copyright problems, and incidentally all of the other special statutory federal question problems, and in developing these two special problems only, the authors say in their preface, "These matters [federal government litigation and federal habeas corpus] are not commonly the subject of separate law school courses. They are of high importance and, as even the severely condensed treatment in this volume shows, they have suffered too long from scholarly and professional neglect." (p. xiv)

The last chapter handles the problem of Supreme Court review of federal decisions. It is an excellent collection of material for one desiring to learn about the methods of review and also the policy of the Supreme Court behind the grant of certiorari.

With this background, let us examine the book critically to see how well the authors have accomplished their purposes. First, the materials collected are superb. The vast amount of

text is carefully, critically, and so far as I could tell on a review reading, accurately prepared. The authors are to be complimented on the prodigious amount of work and the excellence of the scholarship that has gone into the book.

Second, I think that the authors are correct when they indicate that the book is not a book for the basic course in federal jurisdiction and procedure. Such a course, in my judgment, could not be taught successfully from these materials, and in fact, should not be taught at all in law schools. Federal jurisdiction and procedure should be studied along with the study of state jurisdiction and procedure. Comparison needs to be made between the two systems in order to put the students in the shoes of a practitioner, to show the choices that must be made at all stages of litigation and to assist the students to see the problems facing the bar association committees in their efforts to improve the system of judicial administration. Though separate courses in basic federal jurisdiction and procedure have been offered in the past in many schools, they are being replaced by courses in which both federal and state jurisdiction and procedure are studied at the same time. Apparently this is the situation at both Harvard and Columbia. For a full description of such a plan, see Joiner, "Teaching Civil Procedure: The Michigan Plan," 5 *Journal of Legal Education* 459 (1953).

Third, this book would appear to be an excellent basis for an advanced course in federal-state conflicts, taken after the basic courses in procedure and constitutional law. Such a course probably should be handled in small groups and certainly need not be required.

Fourth, this book could serve as a source book for students taking the procedure courses and constitutional law. I should be very pleased to have my students read much of the material in the book for my course in "Jurisdiction and Judgments." It would be a fine reference book for lawyers, to help them solve problems of federal-state conflicts.

In my judgment, the authors have done the profession and law schools a real service by the preparation of these materials. Even if a school does not give the advanced course envisioned by the authors, students in the basic procedural courses should be made to dig into the materials prepared and collected.

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